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It is generally said that to constitute double jeopardy the two offenses must be the same in law and fact. See *Commonwealth v. Roby*, 12 Pick. (Mass.) 496, 504. But the decisions differ as to when such identity exists. That both offenses arose out of the same transaction is not enough. *Morey v. Commonwealth*, 108 Mass. 433; *The King v. Barron*, [1914] 2 K. B. 570. If on trial of the first indictment the accused could lawfully have been convicted of the offense charged in the second, or *vice versa*, by the English rule, followed in many American jurisdictions, there is double jeopardy. *Spears v. People*, 220 Ill. 72, 77 N. E. 112; see *Regina v. Gilmore*, 15 Cox C. C. 85, 87; 2 EAST, PLEAS OF THE CROWN, 522. Thus, it is clear that if one crime is included in the other, or, *a fortiori*, if they are different degrees of the same offense, prosecution for either will be a defense to the other. *Grafton v. United States*, 206 U. S. 333; *Floyd v. State*, 80 Ark. 94, 96 S. W. 125. But if conviction for one of two offenses cannot be had under proof of the other, some states hold that there is not the requisite identity, even though the offenses arose out of the same transaction and have a common essential ingredient. *State v. Rose*, 89 Ohio St. 383, 106 N. E. 50; *State v. Patterson*, 66 Kan. 447, 71 Pac. 860. Other courts, however, under like circumstances, consider a common essential ingredient sufficient to cause jeopardy. *State v. Cooper*, 13 N. J. L. 361; *Herera v. State*, 35 Tex. App. 607, 34 S. W. 943. This view, followed in the principal case, seems sound. See 20 HARV. L. REV. 642.

CRIMINAL LAW — STATUTORY OFFENSES — REQUIREMENT OF MENS REA FOR A CRIME BASED ON POSSESSION. — A Mississippi statute provides that it shall be unlawful to possess liquor, and imposes a penalty of a fine or imprisonment, or both (1918 MISS. LAWS, c. 189, § 2). Liquor was found in the shop of the defendant. The jury found that the defendant did not own the liquor, and had no knowledge of the fact that it was in his shop. *Held*, the defendant should be acquitted. *City of Jackson v. Gordon*, 80 So. 785 (Miss.).

For certain statutory offenses, such as violations of police regulations, in their nature mere torts against the state, to a conviction of which no moral obloquy attaches, *mens rea* may well be considered unnecessary. *People v. Kibler*, 106 N. Y. 321, 12 N. E. 795; *Commonwealth v. Weiss*, 130 Pa. St. 247, 21 Atl. 10. But as to certain more serious offenses, particularly where the penalty is imprisonment, justice requires that the defendant be allowed all common-law defenses not expressly negatived by the legislators. *Sherras v. De Ruitzen*, [1895] 1 Q. B. 918; *State v. Brown*, 188 Mo. App. 248, 175 S. W. 131; *State v. Cox*, 179 Pac. 575 (Ore.). The court in the principal case fails to note the distinction between these two classes of offenses but reaches the correct result by reading the word "knowingly" into the statute. The court intimates that the case might have been rested simply on the ground that one cannot possess that of which he has no knowledge. But specific knowledge is not essential to possession if there is a general intent to control that in which the chattel is included. *Ford v. State*, 85 Md. 465, 37 Atl. 172. See *South Staffordshire Water Co. v. Sharman*, [1896] 2 Q. B. 44, 47; HOLMES, THE COMMON LAW, 220. The principal case seems to indicate that the courts will be reluctant to hold a defendant guilty of any crime based on possession unless he has a more specific intent than is generally considered necessary to constitute possession for the purposes of civil rights and liabilities.

DAMAGES — EXEMPLARY DAMAGES — LIABILITY OF A CORPORATION FOR PUNITIVE DAMAGES FOR THE TORT OF AN AGENT. — In an action for personal injuries alleged to have been sustained by the plaintiff as the result of having been shoved from the platform of one of the defendant's street cars by the defendant's motorman, the court instructed the jury that if the acts of the motorman were done by him wilfully and without legal justification or excuse

or provocation, they might assess punitive damages against the defendant. The jury returned a verdict including punitive damages, and the defendant appealed from the judgment rendered thereon. *Held*, that the judgment be affirmed. *Kennelly v. Kansas City Rys. Co.*, 214 S. W. 237 (Mo.).

Theoretically, a rule allowing punitive damages in civil cases is objectionable, since the purpose of the civil law is to compensate for injury, not to punish the wrongdoer. See 1 SEDGWICK, DAMAGES, 9 ed., § 353; H. E. Willis, "Measure of Damages when Property is Wrongfully taken by a Private Individual," 22 HARV. L. REV. 419, 420. But the doctrine is established by the weight of authority. *Stalker v. Drake*, 91 Kan. 142, 136 Pac. 912; *Yazoo & M. V. R. Co. v. May*, 104 Miss. 422, 61 So. 449. *Contra*, *Longfellow v. Seattle*, 76 Wash. 509, 136 Pac. 855. Whatever may be said in favor of the rule in general, there can be no justification for allowing punitive damages against a principal who is liable only on *respondeat superior*. When the principal is a natural person, the weight of authority is to this effect. *Gaertner v. Bues*, 109 Wis. 165, 85 N. W. 388; *Lake Shore Ry. Co. v. Prentice*, 147 U. S. 101. *Contra*, *Boyer v. Coxen*, 92 Md. 366, 48 Atl. 161. The result should be the same though the principal is a corporation. *Peterson v. Middlesex Traction Co.*, 71 N. J. L. 296, 59 Atl. 456; *Voves v. Great Northern Ry. Co.*, 26 N. D. 110, 143 N. W. 760. But the doctrine of the principal case, imposing punitive damages on a corporation principal liable only on *respondeat superior*, has support in decisions of other states. *Goddard v. Grand Trunk Ry.*, 57 Me. 202; *So. Express Co. v. Brown*, 67 Miss. 260, 7 So. 318. It is argued that otherwise a corporation would never be subject to punitive damages, since it can act only through agents. See *Pullman Palace Car Co. v. Lawrence*, 74 Miss. 782, 22 So. 53. But unless the corporation directed or ratified the misconduct, or was negligent in selecting its agents, it could not possibly be said to deserve punishment. The decisions therefore seem unsound, even in a state permitting punitive damages generally.

DIVORCE—CRUELTY—ABUSE BY MOTHER-IN-LAW.—A husband was financially unable to furnish his bride with any other home than that belonging to his widowed mother with whom he lived. He always treated his wife kindly, but his mother abused her severely. The wife returned to her parents and filed a petition for divorce on the ground of cruelty. *Held*, that the divorce be granted. *Thompson v. Thompson*, 171 N. W. 347 (Mich.).

Where a husband acquiesces in the mistreatment of his wife by third persons, he is chargeable with their cruelty. *Snyder v. Snyder*, 98 Misc. 431, 162 N. Y. Supp. 607; *Sayles v. Sayles*, 103 Atl. 225 (R. I.). Or where he arbitrarily refuses to provide a home away from such persons. *Dakin v. Dakin*, 1 Neb. Unof. 457, 95 N. W. 781; *Hall v. Hall*, 9 Ore. 452. The principal case extends the imputation of cruelty to a husband without fault. The wife was undoubtedly justified in separating herself from the household where she was mistreated. *Marshak v. Marshak*, 115 Ark. 51, 170 S. W. 567; *Hall v. Hall*, 69 W. Va. 175, 71 S. E. 103. And the husband would be chargeable with desertion at the end of the statutory period if by his own fault he failed to provide a separate home. *Curlett v. Curlett*, 106 Ill. App. 81. But not if his inability continued without his fault. *Skean v. Skean*, 33 N. J. Eq. 148. In the principal case, the wife's grievance narrows down to the non-culpable inability of the husband to furnish her a proper home. It would seem that the court should have gone no further than to decree legal separation, in the absence of a statute making nonsupport a ground for absolute divorce.

EQUITABLE SERVITUDES—STATUTE OF FRAUDS—REPRESENTATION OF FUTURE CONDUCT AS BASIS OF ESTOPPEL.—The defendant sold the plaintiff a lot near the ocean, retaining the intervening land, and orally promising to build nothing except a boardwalk upon it. The plaintiff, relying upon the